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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUIS GAYTAN, Plaintiff, vs. CITY OF BRAWLEY, OFFICER TORRES, and DOES 1 through DOE 100, Inclusive, Defendants.	No. 07-CV-2353-L-BLM **DEFENDANTS' ANSWER TO COMPLAINT FOR DAMAGES**

Defendants CITY OF BRAWLEY and OFFICER TORRES (hereinafter "defendants") in answer to the Complaint for Damages of LUIS GAYTAN (hereinafter "plaintiff") on file herein, for themselves alone, deny and allege as follows:

I.

INTRODUCTION

1. These answering defendants admit that paragraph 1 of plaintiff's Complaint refers to various causes of action alleged in the Complaint. These answering defendants lack sufficient knowledge and information at this time to either admit or deny whether other individuals' identities are currently unknown.

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2. These answering defendants do not know the identity of the DOE defendants and are therefore unable to admit or deny the allegations contained within Paragraph 2 of the Complaint.

II.

JURISDICTION

3. These answering defendants admit that the citations to authority by plaintiff in Paragraph 3 of the Complaint refer to jurisdictional authority. However, these answering defendants lack sufficient knowledge and information at this time to either admit or deny whether all jurisdictional requirements have been met under applicable jurisdictional authority.

III.

VENUE

4. These answering defendants do not know the identity of all witnesses, parties and evidence and therefore lack sufficient knowledge and information at this time to either admit or deny whether venue is proper.

IV.

PARTIES

5. These answering defendants lack sufficient knowledge and information at this time to either admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. These answering defendants admit on information and belief that the CITY OF BRAWLEY employed OFFICER TORRES. These answering defendants do not know the identity of the DOE defendants and are therefore unable to admit or deny whether the CITY OF BRAWLEY employed such DOE defendants.

7. These answering defendants admit on information and belief that the CITY OF BRAWLEY, through the Brawley Police Department, was responsible for

hiring, training, supervising and disciplining OFFICER TORRES. These answering defendants do not know the identity of the DOE defendants and are therefore unable to admit or deny whether the CITY OF BRAWLEY was responsible for hiring, training, supervising and disciplining such DOE defendants.

8. These answering defendants lack sufficient knowledge and information at this time to either admit or deny the allegations contained in Paragraph 8 of the Complaint as the phrase "all relevant times" is vague and ambiguous.

9. These answering defendants deny each and every allegation contained in Paragraph 9 of the Complaint.

FIRST CAUSE OF ACTION
(Violation of Fourth Amendment - All Defendants)

10. These answering defendants neither admit nor deny the allegations contained in Paragraph 10 of the Complaint because it consists merely of reference to other paragraphs in the Complaint.

11. These answering defendants neither admit nor deny Paragraph 11 of the Complaint as No paragraph 11 is alleged.

12. These answering defendants admit that plaintiff was at property located at 986 E Street in Brawley, California, at the time of the incident. These answering defendants lack sufficient knowledge and information at this time to either admit or deny the remaining allegations contained in Paragraph 12 of the Complaint.

13. These answering defendants admit that plaintiff was at property located at 986 E Street in Brawley, California, at the time of the incident. These answering defendants lack sufficient knowledge and information at this time to either admit or deny the remaining allegations contained in Paragraph 13 of the Complaint.

14. These answering defendants admit that OFFICER TORRES was at 986 E Street in Brawley, California, on the date of the incident and that plaintiff was arrested.

These answering defendants deny each and every remaining allegation contained in Paragraph 14 of the Complaint.

15. These answering defendants lack sufficient information at this time to either admit or deny who, if anyone, was employed by plaintiff. These answering defendants deny each and every remaining allegation contained in Paragraph 15 of the Complaint.

16. These answering defendants lack sufficient knowledge and information at this time to either admit or deny the allegations contained in Paragraph 16 of the Complaint.

17. These answering defendants are unable to admit or deny whether OFFICER TORRES was previously “in a dating relationship” as that phrase is vague and ambiguous. These answering defendants deny each and every remaining allegation contained in Paragraph 17 of the Complaint.

18. These answering defendants deny each and every allegation contained in Paragraph 18 of the Complaint.

19. These answering defendants admit that plaintiff was transported to the jail by OFFICER TORRES. These answering defendants deny each and every remaining allegation contained in Paragraph 19 of the Complaint.

20. These answering defendants admit that plaintiff was jailed and released. These answering defendants deny each and every remaining allegation contained in Paragraph 20 of the Complaint.

21. These answering defendants deny each and every allegation contained in Paragraph 21 of the Complaint.

22. These answering defendants deny each and every allegation contained in Paragraph 22 of the Complaint.

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SECOND CAUSE OF ACTION
(Violation of Fourteenth Amendment – Officer Torres)

23. These answering defendants neither admit nor deny the allegations contained in Paragraph 23 of the Complaint because it consist merely of reference to other paragraphs in the Complaint.

24. These answering defendants deny each and every allegation contained in Paragraph 24 of the Complaint.

25. These answering defendants deny each and every allegation contained in Paragraph 25 of the Complaint.

THIRD CAUSE OF ACTION
(Violation of Plaintiff's Constitutional Rights – City of Brawley)

26. These answering defendants neither admit nor deny the allegations contained in Paragraph 26 of the Complaint because it consists merely of reference to other paragraphs in the Complaint.

27. These answering defendants lack sufficient knowledge and information at this time to either admit or deny the allegations contained in Paragraph 27 of the Complaint as the allegations in Paragraph 27 of the Complaint are vague and ambiguous.

28. These answering defendants deny each and every allegation contained in Paragraph 28 of the Complaint.

29. These answering defendants deny each and every allegation contained in Paragraph 29 of the Complaint.

30. These answering defendants deny each and every allegation contained in Paragraph 30 of the Complaint.

31. These answering defendants deny each and every allegation contained in Paragraph 31 of the Complaint.

32. These answering defendants deny each and every allegation contained in Paragraph 32 of the Complaint.

FOURTH CAUSE OF ACTION
(Violation of California Constitution Article One, Section Thirteen – All Defendants)

33. These answering defendants neither admit nor deny the allegations contained in Paragraph 33 of the Complaint because it consists merely of reference to other paragraphs in the Complaint.

34. These answering defendants deny each and every allegation contained in Paragraph 34 of the Complaint.

FIFTH CAUSE OF ACTION
(Battery – All Defendants)

35. These answering defendants neither admit nor deny the allegations contained in Paragraph 35 of the Complaint because it consists merely of reference to other paragraphs in the Complaint.

36. These answering defendants deny each and every allegation contained in Paragraph 36 of the Complaint.

SIXTH CAUSE OF ACTION
(False Imprisonment – All Defendants)

37. These answering defendants neither admit nor deny the allegations contained in Paragraph 37 of the Complaint because it consists merely of reference to other paragraphs in the Complaint.

38. These answering defendants deny each and every allegation contained in Paragraph 38 of the Complaint.

SEVENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress – All Defendants)

39. These answering defendants neither admit nor deny the allegations contained in Paragraph 39 of the Complaint because it consists merely of reference to other paragraphs in the Complaint.

40. These answering defendants deny each and every allegation contained in Paragraph 40 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that the Complaint and each purported count or claim stated therein, fails to state facts sufficient to constitute claims for relief against these answering defendants.

SECOND AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that the plaintiff has waived any and all claims he may have had against these answering defendants, said waiver being voluntary, deliberate and informed, and consented to the conduct complained of.

THIRD AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that the Complaint, and each purported count or claim stated therein, is barred by the applicable statute of limitations as set forth in state and federal case law and as set forth in state and federal statutes, including, but not limited to, California Code of Civil Procedure §§335.1 and 338.

FOURTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff, by the exercise of diligence, could have mitigated against his claimed damages; therefore, his damages, if any, must be reduced, diminished or defeated by such amounts as should have been mitigated.

FIFTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that at all times alleged in the Complaint, these answering defendants were acting in good faith, and within the scope of their duties and with justification.

SIXTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that defendants had reasonable cause to detain and arrest plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff failed to comply with the claim provisions of the California Government Tort Claims Act.

EIGHTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to California Government Code § 815.2(b) which provides immunity for injuries arising from acts or omission of an employee of the public entity where the employee is immune from liability.

NINTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to California Government Code §820.2, as any act or omission alleged in the Complaint was within the exercise of discretion vested in employees of these answering defendants.

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TENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to California Government Code §820.4, as any act or omission alleged in the Complaint was performed with due care and in the execution and enforcement of the laws of the State of California.

ELEVENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to California Government Code §820.6, as any act or omission alleged in the Complaint was performed in good faith and without malice.

TWELFTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are entitled to absolute immunity as set forth under federal statutes and federal case law.

THIRTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff has engaged in conduct with respect to the activities which are the subject of the Complaint, and by reason of said activities and conduct, is estopped from asserting any claim of damages or seeking any other relief against these answering defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are entitled to qualified immunity as set forth under federal statutes and federal case law.

FIFTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff's Complaint fails to allege particular acts of constitutional deprivations and

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therefore plaintiff fails to state a claim under the United States and California Constitution against these answering defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that any detainment of the plaintiff was privileged in that plaintiff was detained only for a reasonable period of time for the purpose of conducting a routine search.

SEVENTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that any detention of plaintiff was privileged in that plaintiff was detained in a reasonable manner for the purpose of conducting a routine search.

EIGHTEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that in making any detention of plaintiff, only a reasonable amount of non-deadly force was used.

NINETEENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that as a public entity and public employee, they are not liable for punitive damages or other damages imposed primarily for the sake of example and to punish the defendants.

TWENTIETH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff fails to state a cause of action against the CITY OF BRAWLEY pursuant to Monell v. Department of Social Services, 436, U.S. 658, with respect to the Complaint, and the Third Cause of Action in particular.

TWENTY-FIRST AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that any damages incurred by plaintiff were directly and proximately caused or contributed by plaintiff’s own actions.

TWENTY-SECOND AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that, if they are held liable for damages to plaintiff or any other party in any amount, these defendants are only severally liable in an amount equal to their apportioned share of liability for any damage suffered by plaintiff or any other party. The fault, if any, of defendants should be compared with the fault of other defendants or third parties and damages, if any, should be apportioned among the defendants or other parties in direct relation to each defendant or party's comparative fault. These defendants should be obligated to pay only such damages, if any, which are directly attributable to their percentage of comparative fault. To require these defendants to pay more than their percentage of comparative fault violates the equal protection and due process clauses of the Constitution of the United States and the Constitution of the State of California.

TWENTY-THIRD AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that by virtue of plaintiff's conduct, plaintiff should be barred from recovering against these defendants by the equitable doctrine of unclean hands.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff is barred from any recovery for any loss, injury or damage resulting from detention, arrest or imprisonment, as alleged in the Complaint, against these defendants in that, at all material times and places alleged in the Complaint, these defendants had probable cause to either arrest or detain the plaintiff for a suspected crime or crimes and/or to use reasonable force, and were authorized to so detain, arrest and imprison plaintiff and/or to use reasonable force to do so.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff is barred from any recovery from these defendants for any loss, injury or damage resulting from any force either actually employed or about which defendants warned, in that any and all such force was legal, proper, justified, and necessary both for the self-defense and protection of each of the defendants, as well as the public, in the performance of their duties.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to Penal Code §836.5, as no liability shall be imposed upon a public officer or employee making an arrest based upon reasonable cause.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to Penal Code §835, as the restraint of plaintiff was reasonable for his arrest and detention.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to Penal Code §837, as there was reasonable cause for believing that plaintiff had committed a public offense.

TWENTY-NINTH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that they are immune from liability pursuant to Penal Code §847, as there was reasonable cause to believe the arrest was lawful, the arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by plaintiff and the arrest was made pursuant to the requirements of Penal Code §§ 142 and/or 837-839.

THIRTIETH AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that plaintiff's Complaint fails to state facts entitling plaintiff to recover punitive damages.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

These answering defendants are informed and believe and thereon allege that the conduct alleged in plaintiff's Complaint did not violate either the Fourth Amendment to the United States Constitution or Article I, Section 13 of the California Constitution as these answering defendants' conduct substantially furthered one or more countervailing interests.

WHEREFORE, these answering defendants pray for judgment herein as follows:

1. That plaintiff take nothing by way of his Complaint;
2. For costs of suit incurred herein, including attorneys' fees; and
3. For such other and further relief as the court deems just and proper.

DATED: January 16, 2008

GIBBS & FUERST

BY: _s/Michael T. Gibbs_

MICHAEL T. GIBBS
STEVEN A. TISI
Attorneys for Defendants
CITY OF BRAWLEY and
OFFICER TORRES